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In re Application of
Tomowaki Takahashi
Application No. 10/734,133
Filed: December 15, 2003
Attorney Docket No. 1539.1004REC

OFFICE OF PETITIONS
DECISION ON
PETITION

This is a decision on the petition filed April 16, 2004 to accord a filing date, which is treated under 37 CFR 1.182.

Application papers in the above-identified application were filed on December 15, 2003. However, on April 7, 2004, the Office of Initial Patent Examination mailed a "Notice of Incomplete Nonprovisional Application," notifying applicant that the application had not been accorded a filing date because a complete specification as prescribed by 35 U.S.C. 112 was missing and that the application was deposited without drawings.

In response to the Notice mailed April 7, 2004, petitioner properly proffered a copy of a date stamped return receipt which corroborated petitioners assertion that the application had been filed with a thirteen (13) page specification, (at least one claim was included in the proffered specification) and drawings (Figures 1-15, 16A, 16B and 16C-28), although the number of drawings sheets specifically submitted upon filing has not been asserted.

Petitioner also argues in the alternative that this petition be treated as having incorporated by reference the prior application, 09/766,486, filed January 19, 2001 (issued February 24, 2004 as RE38438)

It is noted that the application transmittal cover sheet indicates that the above identified application is a continuing application of prior filed application no. 09/766,486 and is incorporated by reference herein in their entirety. MPEP 201.06 (c) states that:

... an applicant may incorporate by reference the prior application by including, in the application-as-filed, a statement that such specifically enumerated prior application or applications are "hereby incorporated herein by reference." The statement may appear in the specification or in the application transmittal letter. The inclusion of this incorporation by reference of the prior application(s) will

permit an applicant to amend the continuing application to include any subject matter in such prior application(s), without the need for a petition. (emphasis supplied)

Based on petitioners' representations it appears that the specification and drawings were present in the Office on December 15, 2003, albeit in the file of another application, *i.e.*, Application No. 09/766,486.

However, as required, copies of the complete application papers filed on December 15, 2003 are not filed with the instant petition. Thus, the petition is **DISMISSED** without prejudice to reconsideration because petitioners have not supplied a copy of the specification and drawings filed on December 15, 2003. Petitioners must supply copies of the specification and drawings with a renewed petition.

Any request for reconsideration should be filed within **TWO MONTHS** of the date of this decision in order to be considered timely. This time period may not be extended pursuant to 37 CFR 1.136. The application will be retained in the Office of Petitions for **TWO (2) MONTHS** to await petitioner's reply to this decision. If no response is received within two (2) months, the application will be forwarded to the Office of Initial Patent Examination for further processing as an incomplete application.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petitions
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

By FAX: (703) 872-9306
 Office of Petitions

Telephone inquiries regarding this decision should be directed to the undersigned Petitions Attorney at (703) 305-4497.

A handwritten signature in cursive script, reading "Patricia Faison-Ball". The signature is written in black ink and is positioned above the printed name and title of the signatory.

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions